Therefore, an NTIA or RUS grant that enabled or otherwise facilitated build-out should not preclude support for on-going costs where necessary.[18]

5. Targeting and the role of competitors

Targeting of support is integral to realizing the goals of ubiquitous broadband deployment because it resolves inadequate funding occasioned by study area and statewide averaging. Study area averaging balances lower-cost areas within city or town centers against the higher cost outlying areas. Problematically, however, carriers frequently face competition in the lower-cost areas, and are accordingly not able to earn in those locations revenues that can be used to offset the high-cost areas where those carriers have COLR obligations; rate averaging in some rural study areas does not produce enough contribution margin to cover the cost of service in the less densely-populated parts of those study areas. Accordingly, study area averaging does not always work as a methodology for calculating the need for high-cost support for price cap carriers that generally have many wire centers in a study area and often spread across differing geographic regions of the state. This inclusion of the low-cost areas in cost calculations diminishes the likelihood of carriers obtaining support sufficient to extend networks capable of providing advanced services. Accordingly, ITTA recommends the administration of support on a wire center basis. This approach, as compared to census

[18] The NTIA and RUS issue is clouded by the eventual tax treatment of those monies, which could be reduced to after-tax amounts such as 60%, raising the question of whether Congress and the President really intended to recover approximately 40% of the $7.2 billion via taxes on the grants. There remains an open question as to whether funds received under ARRA are subject to income tax pursuant to Internal Revenue Code ("IRC") Section 61 or excludable from taxable income pursuant to IRC Section 118 or another provision of the IRC.

block or census tract, is an appropriate basis because carriers' internal processes are currently aligned in that manner; carriers do not keep customer location records on census block or census tract basis. Nevertheless, a methodology for compiling data on a sub-wire center basis may emerge in the future, and more granular distribution of support need not be foreclosed. In the foreseeable future, however, distribution on a wire center basis best matches the manner of record-keeping and calculations carriers currently employ.

The presence of an alternative provider should not preclude support to the incumbent provider. In many areas, competitive providers select fertile regions of the market, leaving the more outlying areas to the COLR. Severing the low-cost supported areas from the high-cost areas ignores the realities of the manner in which networks are deployed: carriers cannot "cabin off" the high-cost areas and separate the facilities used to serve them from those used to maintain service in the lower-cost areas.

In all events, the Commission must amend the manner in which it distributes support to duplicative carriers. Moreover, a potential recipient of broadband support should not even rise to the level of "duplicative carrier" if it is not charged with the same obligations and liabilities as the COLR. For example, ITTA included in its 2008 USF proposal[19] a condition that recipients serve their entire service area over their own facilities within five years. To the extent specific public interest benefits of mobile broadband access are identified, support for mobile broadband may be provided via a

[19] *Federal-State Board on Universal Service: Ex Parte of Independent Telephone & Telecommunications Alliance,* CC Docket No. 96-45, WC Docket No. 05-337, at 1 (Oct. 10, 2008).

complementary mobility program, conceptually similar to proposals offered previously by the Federal-State Joint Board for Universal Service.[20]

6. Impact of capping support

Policy-makers must be aware that deployment to unserved areas will be directly proportional to the amount of support available. Capping support necessarily decelerates deployment. Capping support at unrealistically low levels would be inconsistent with the stated goals of furthering robust broadband deployment. As noted above, ITTA members stand ready and willing to deploy broadband further; their respective abilities rely upon available resources. In all events, policy-makers must identity the goals of the NBP and provide supporting resources accordingly.

7. Impact of competitor offering broadband without support

The Commission seeks comment on the impact of reducing or eliminating high-cost support in areas in which competitors provide service, either with or without support. ITTA submits that the nature of the COLR must be contemplated within the context of this inquiry. The COLR obligations that attach to ILECs require those companies to stand ready to serve all consumers in their area. The fact that a second entity, of any technology, may serve consumers in *part* of that service territory generally does not diminish the cost of the incumbents' network that is designed, sized, and maintained in order to provide service to the entire area. Accordingly, as carriers stand ready as the COLR as part of the "social compact" that attends receipt of high-cost support, carriers

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[20] *High Cost Universal Service Support, Federal-State Joint Board on Universal Service: Notice of Proposed Rulemaking,* WC Docket No. 96-45, FCC 08-5 (rel. Jan. 29, 2008) (Joint Board NPRM). The Joint Board NPRM contained as an appendix the November 2007 Recommended Decision of the Joint Board, *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service: Recommended Decision,* WC Docket No. 05-337, CC Docket No. 96-45, FCC 07J-4 (2007).

would similarly need to be absolved of COLR obligations should that support cease. That result, however, risks the prospects of National broadband deployment, because portions of a network cannot be carved off and left to wither with an expectation that other portions will thrive. This is especially true in service areas of ITTA members, where competition exists in the town center but is absent in the far-flung outlying areas. Policy-makers must not ignore the great "stand ready" costs of the COLR.

D. COMPETITIVE LANDSCAPE

1. COLR in a broadband world

COLR obligations arise out of a determination that the provision of voice-service to all areas of the Nation is in the public interest, and should be supported in a manner consistent with that interest. Accordingly, to the extent Congress has identified a public interest basis to the further deployment of broadband, policy-makers must ensure that entities are in place to carry forth that objective. In markets capable of supporting numerous competitors (or, alternatively, in areas in which a natural profitable monopoly can emerge), the concept of a COLR need not emerge because sufficient market incentives exist to maintain the presence of a goods or service provider. On the cusp of a broadband future, policy-makers must incorporate into the NBP the recognition that entities charged with COLR obligations must be given proper incentives to accept that responsibility; as in the voice environment, those incentives include mechanisms that mitigate the otherwise overwhelming expense of standing ready and providing service to those areas. COLR obligations should be accordingly waived if an entity no longer receives high-cost support. It would be fundamentally unfair to charge a carrier with an

unfunded mandate to provide service where other providers have found conditions uneconomical.

2. Impact of requiring recipient entities to provide underlying transmission on a wholesale basis

The Commission seeks comment on the impact of requiring high-cost recipients to provide underlying transmission on a wholesale basis. ITTA submits that policy-makers should resist the false choice between assuring availability and facilitating competition. The former is a statutory imperative of the ARRA; the latter could impair providers gravely if critical retail margins are lost when providing transmission at a wholesale level. The Commission should not be misled into repeating CETC-oriented inefficiencies that arose as the USF was directed to multiple competitive providers. As noted above, the goal of the NBP is the further deployment of broadband throughout the Nation; to the extent obligations are placed on recipients of high-cost broadband support, those obligations should be limited to build-out and network performance characteristics, rather than "unbundling-type" requirements. Support for universal broadband should not be conditioned upon open network/interconnection obligations. The Commission must stay the course of the primary statutory intent, which is to bring broadband to unserved areas. The Commission has found previously that

> excessive network unbundling requirements tend to undermine the incentives of both incumbent LECs and new entrants to invest in new facilities and deploy new technology. The effect of unbundling on investment incentives is particularly critical in the area of broadband deployment, since incumbent LECs are unlikely to make the enormous investment required if their competitors can share in the benefits of these facilities without participating in the risk inherent in such large scale capital investment.[21]

[21] *Review of the Section 251 Unbundling Obligations of Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications*

Stringent unbundling-type requirements for broadband providers will reduce natural incentives for investment and deployment that may exist when encouraged by Federal support, and should be rejected. High-cost support is necessary where normal economic forces do not support a provider. By contrast, the perverse results of cannibalizing providers in the hopes of achieving impossible self-supporting competition is described aptly in an academic journal:

> If in the face of more competitors, broadband providers are forced to amortize the fixed costs of their networks over significantly fewer customers, total broadband costs will rise – and prices will almost certainly have to rise as well, even if profits are squeezed and efficiencies maximized. The only way this situation could be averted would be if a new entrant was not successful in gaining any broadband customers. In this case, overall broadband costs would still increase but the costs would be borne by the new entrant's bondholders and stockholders. If all new entrants gained customers, however, then the incumbents by definition would have fewer customers and hence less revenue to amortize the costs of their networks.[22]

Capability: Report & Order and Order on Remand and Further Notice of Proposed Rulemaking, Docket Nos. 01-338, 96-98, 98-147, FCC 03-36, at para. 3 (2003).

[22] Robert Atkinson, "*The Role of Competition in a National Broadband Policy,*" Journal of Telecommunications and High Technology Law, at 10 (Oct. 2007), at 10 (*available at* http://www.itif.org/files/JTHTL.pdf (last viewed Dec. 5, 2009, 16:35).

A recent study examined the effect of European unbundling requirements on investment. Scott J. Wallsten and Stephanie Hausladen, *Net Neutrality, Unbundling, and Their Effects on International Investment in Next Generation Networks,* Technology Policy Institute, Washington, DC (Mar. 2009) (Wallsten/Hausladen). The study relied upon data from 27 European countries, including the United Kingdom, France, Netherlands, Germany, South Korea, and Japan, with datasets representing DSL, cable, fiber, and wireless local loop. The study concluded, "the more a country relies on unbundled local loops or bit stream unbundling to provide DSL service, the less incumbents and entrants invest in fiber." Wallsten/Hausladen at 107. One finding proposed by the study was that "firms with the ability to invest in equipment are more likely to use local loops instead of building new platforms if the option is available to them." Wallsten/Hausladen at 106. This result is inconsistent with the premise of efforts

The Commission should refrain from imposing unbundling-type obligations on supported providers. Support is necessary to extend networks where natural competitive forces would not support them; the imposition of regulations intended to introduce secondary competitors where the market cannot maintain a single provider absent support defies logic. The Commission must ensure that the primary goal of the National Broadband Plan, namely, the provision of broadband across the Nation, is not impeded by saddling the market with unnecessary, inefficient, and costly regulations. The dampening effect of forcing competition into areas where it cannot emerge naturally augurs ill-effects for the market.

E. HIGH-COST FUNDING OVERSIGHT

Oversight modeled upon current mechanisms would be appropriate. Confirmation of carrier compliance, however, should take a more rational route than the current audits process, which has been plagued by several strains of inefficiencies.[23]

F. LIFELINE/LINK-UP

Policymakers may consider subsidies for qualifying low-income individuals that could be applied to qualifying devices used for broadband access. ITTA would support

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to bring broadband to unserved areas, since it does not foster extended deployment, and moreover introduces risks where service is already available.

[23] *See, e.g., See, Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight: Reply Comments of the Independent Telephone & Telecommunications Alliance,* WC Docket No. 05-195 (Dec. 15, 2008); *Request for Review by AT&T Inc. of Decision of Universal Service Administrator: Comments of the Independent Telephone & Telecommunications Alliance,* CC Docket No. 96-45, WC Docket 05-337 (Aug. 20, 2009); *Request for Universal Service Fund Policy Guidance Requested by the Universal Service Administrative Company: Comments of the Independent Telephone & Telecommunications Alliance,* WC Docket No. 05-337, WC Docket No. 06-122, CC Docket No. 06-45 (Oct. 28, 2009).

mechanisms that would enable, but do not compel, carrier participation in programs within which broadband providers could either sell government-subsidized computers directly to low-income consumers, or partner with hardware manufacturers for the same purpose. Inasmuch as Link-Up subscribers are not required to "repay" discounts if their eligibility criteria change subsequent to initiation of service, consumers who qualify for this subsidized equipment would likewise own their equipment outright.

ITTA could support eligibility requirements that are the same as the eligibility criteria in the existing low-income program. These eligibility standards have been vetted and found acceptable. If the broadband consumer eligibility requirements are the same as existing annual Lifeline certification requirements, then ineligible subscribers will be readily identified.

Subsidized broadband services should be limited to offerings capable of supporting core applications, including those providing remote conferencing and distance education.

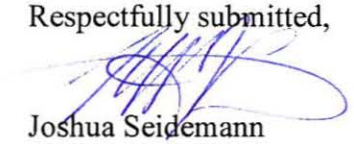
Regarding potential carrier obligations to publicize low-income offerings, the Commission must not micromanage marketing by private entities already competing vigorously in the broadband marketplace. It is in private entities' interest to experiment with and conduct outreach most likely to increase broadband subscribership. Commission-imposed advertising requirements are not necessary and, as evidenced by ITTA members' collective experience with existing low-income programs, such requirements could impose significant costs on participating providers. If the Commission decides special publicity is needed for new low-income programs (above and beyond what private entities will no doubt voluntarily conduct), then the Commission

should focus its time and attention on government efforts to promote these programs. Would-be eligible applicants could be best informed of Lifeline programs by entities overseeing programs in which those individuals participate. For example, an applicant for "food coupons" could be informed of Lifeline/Link-Up during that application process; similarly, families of students eligible for school lunch programs discounts could be informed by the relevant entity of discounted communications services.

III. CONCLUSION

For the reasons stated herein, policy makers must ensure adequate incentives and mechanisms to encourage broadband in high-cost areas where general economic models will not support deployment. ITTA members, who serve with COLR obligations, have deployed broadband widely across their service territories. Bringing broadband to the final unserved areas will require a commitment of resources commensurate with National goals, and ITTA looks forward to working with the Commission to ensure broadband deployment throughout the Nation.

Respectfully submitted,



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DATED: December 7, 2009

ATTACHMENT A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

PETITION OF AMERICAN ELECTRIC POWER SERVICE COROPORATION, DUKE ENERGY CORPORATION, SOUTHERN COMPANY SERVICES, INC. AND EXCEL ENERGY SERVICES, INC. FOR A DECARATORY RULING	))))))	**WC DOCKET NO. 09-154**

COMMENTS OF THE

INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

To the Commission:

The Independent Telephone & Telecommunications Alliance (ITTA) hereby submits comments in the above-captioned proceeding. ITTA is an alliance of mid-size telephone companies that collectively serve approximately 30 million access lines in 44 states, and which offer subscribers a broad range of high-quality wireline and wireless voice, data, Internet, and video services. ITTA members are committed to providing their end-users with affordable access to communications services.

In the instant proceeding, American Electric Power Service Corporation, Duke Energy Corporation, South Company Services, Inc., and Xcel Energy Services, Inc. (Petitioners) seek a declaratory ruling on what rate formula should apply when cable attachments are used to provide interconnected Voice over Internet Protocol (VoIP) service. Pole attachment rate regulation, however, should not address cable providers in isolation from all other broadband providers. Rather, consistency in rate regulation is needed to increase regulatory parity, diminish disruptive market signals, and preempt inappropriate regulatory advantages. Accordingly, ITTA asks that the Commission not

act on the Petition, and, instead, refresh the general record and address pole attachment regulation in a comprehensive fashion within Docket No. 07-245

Currently, cable owners pay attachment fees at a rate that is generally lower than that which is charged to competitive providers of telecommunications services. Exacerbating this discrepancy in the broadband arena is the fact that the Commission has not yet reconciled its rules to reflect the statute that guarantees incumbent local exchange carriers (ILECs) just and reasonable rates, terms and conditions for their pole attachments.[1] This regulatory chasm frustrates broadband deployment by enabling utility pole owners to levy exorbitant rates on ILECs.

In the absence of clear Commission guidance regarding an ILEC rate formula, ILECs may have difficulty refusing a pole owner's "final offer" during negotiations, and accordingly must include within their broadband costs the high fees paid for pole attachments. In instances where deployment depends on aerial cable, unreasonable rates, terms, and conditions that are imposed on ILECs by pole owners serve as formidable disincentives to deployment absent means by which the carrier can recover its pole attachment costs. ILECs consequently are placed at a competitive disadvantage as different rate formulae are applied to similar facilities based largely on the entity that is affixing the attachment. As noted above, cable providers pay one, lower rate; competitive local exchange carriers (CLECs) pay a higher rate; and, ILECs, lacking Commission rule protection afforded by a rate formula, are subject to rates that very

[1] *See Implementation of Section 224 of the Act: Amendment of the Commission's Rules and Policies Governing Pole Attachments: Comments of the Independent Telephone & Telecommunications Alliance,* WC Docket No. 07-245, RM-11293, RM-11303 (Mar. 7, 2008). *See, also, Reply Comments of the Independent Telephone & Telecommunications Alliance* (Apr. 22, 2008).

frequently range far upward. This discrepancy perpetuates regulatory disparity and demands regulatory redress.

To further the Commission's stated its intent to "promote the pro-competitive and deregulatory goals of the Act . . . ,"[2] the Commission should remove such regulatory mechanisms that impose on providers varying cost obligations that are not substantially related to actual costs. The Commission's current pole attachment regulatory regime, which enables different rate formulae for identical attachments, is no longer appropriate as intermodal competition increases:

> [T]he Commission has recognized that once-clear distinction between 'cable television systems' and 'telecommunications carriers' has blurred as each type of company enters markets for the delivery of services historically associated with the other. The Commission has identified cable operators as market participants in both the enterprise and mass market for telecommunications services. The Wireline Competition Bureau has recently clarified that wholesale telecommunications carriers that provide services to other service providers, including cable operators providing Voice over Internet Protocol (VoIP) services, are indeed 'telecommunications carriers' for the purpose of Section 251 of the Act, and are thus entitled to interconnect with incumbent LECs.[3]

A Time Warner Telecom, Inc., White Paper characterizes the different rates among cable and telecommunications providers as promoting "regulatory bias . . . [in] investment decisions regarding deployment of broadband and other services."[4]

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[2] *Implementation of Section 224 of the Act: Amendment of the Commission's Rules and Policies Governing Pole Attachments: Notice of Proposed Rulemaking,* WC Docket No. 07-245, RM-11293, RM-11303, FCC 07-187, at para. 36 (2007) (Pole Attachments NPRM) at para. 2.

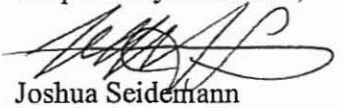
[3] Pole Attachments NPRM at para. 14 (internal citation omitted).

[4] Letter from Thomas Jones, Counsel for Time Warner Telecom, Inc., to Marlene H. Dortch, Secretary, FCC, RM-11293, RM-11303, Attach. at 11-12 (filed Jan. 16, 2007) (TWTC White Paper).

Rather than act in a piecemeal fashion by addressing only rates paid by cable broadband providers, the Commission should, instead, address pole attachment rate regulation in a comprehensive manner within Docket No. 07-245. That open docket should be refreshed with comments on pole attachment rates charged to all broadband providers. Reforms then should be considered in conjunction with development of recommendations included within the National Broadband Plan.

The issues raised in the instant Petition are best resolved by a proceeding that addresses rate formulas for *all* broadband pole attachments, and which concludes in the elimination of inappropriate competitive advantages. Comprehensive resolution of pole attachment issues is necessary to facilitate continuing deployment of affordable broadband and satisfy the Commission's desire to achieve regulatory parity. Therefore, for the reasons stated herein, ITTA recommends the Commission to defer consideration of the instant petition to Docket No. 07-245, and to within that docket address the proper rate formula for all providers of broadband services.

Respectfully submitted,



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DATED: September 24, 2009